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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services	)	CC Docket No. 95-20
	)	
1998 Biennial Regulatory Review -- Review of *Computer III* and ONA Safeguards and Requirements	)	CC Docket No. 98-10

COMMENTS OF AT&T CORP.

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SUMMARY

AT&T supports the Commission's objective of reducing or eliminating rules and regulatory requirements that have become unnecessary or redundant. At the present time, however, notwithstanding the purpose of the 1996 Act to open local exchanges to competition, the local market remains a monopoly of the BOCs and other incumbent LECs and many of the provisions of the 1996 Act essential to the development of local competition have not been implemented as a result of legal challenges or the recalcitrance of the BOCs and GTE. As a result, it would be premature for the Commission to relieve the BOCs and other incumbent LECs of their regulatory obligations at this time based either on the development of competition in local telecommunications markets or on the constraints imposed on the BOCs by the 1996 Act. However, it would be appropriate to implement some of the Commission's proposed changes where the Commission's authority to do so is unchallenged and the need to do so is clear.

As discussed in these Comments, AT&T agrees with the Commission's tentative conclusion that the BOCs' provision of intraLATA information services should remain subject to the nonstructural safeguards established in the Commission's Computer III and ONA proceedings. In light of their continued monopoly position in their local markets and bottleneck control over essential local facilities required by competing information service providers ("ISPs"), the BOCs continue to have both the

ability and the incentive to engage in anticompetitive conduct against competing ISPs. In these circumstances, it is essential that, at a minimum, the Commission keep in place the Computer III nonstructural safeguards that were designed to protect competing ISPs from discriminatory or anticompetitive behavior by the BOCs.

AT&T does not oppose the Commission's proposal to relieve the BOCs of their obligation to file Comparably Efficient Interconnection ("CEI") plans provided that certain other tariffing and network disclosure requirements essential to the development of competition remain in force. In particular, the Commission should continue to require the BOCs to meet their existing ONA obligations (1) to file tariffs for all basic service elements, (2) to provide adequate disclosure of network changes, and (3) to publish a list of basic service elements used by the BOC to provide its own information services.

Finally, AT&T agrees with the Commission's tentative conclusion that the notice of network changes rules established pursuant to Section 251(c)(5) should supersede the Commission's previous network information disclosure rules and reporting requirements established in the Computer II, Computer III and ONA proceedings. However, the Commission's proposal to retain the "all-carrier rule" insofar as it applies to non-dominant interexchange carriers is totally unwarranted and should be rejected. In view of the Commission's prior findings that the interexchange market is highly competitive and that no carrier in that market has market power, there is no justification for

subjecting non-dominant interexchange carriers to the all-carrier rule. So long as an appropriate interface is available to unaffiliated ISPs and no new or similar functionality is denied them, non-dominant interexchange carriers should be free to optimize network efficiencies by integrating their basic and enhanced networks without costly and pointless regulatory constraints. Indeed, in this respect the all-carrier rule exemplifies the type of regulation that has outlived any conceivable usefulness, and should be removed promptly under the Commission's statutory duty under Section 11 of the Telecommunications Act to eliminate unnecessary regulations.

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COMMENTS OF AT&T CORP.

Pursuant to Section 1.415 of the Commission's Rules and its Further Notice of Proposed Rulemaking, released January 30, 1998 ("FNPRM"), AT&T Corp. ("AT&T") submits these comments concerning the continued need for certain of the Commission's *Computer III* and *Open Network Architecture* ("ONA") safeguards and requirements, under which the Bell Operating Companies ("BOCs") currently provide information services, in light of changes in telecommunications technology and market conditions and the passage of the Telecommunications Act of 1996 ("1996 Act").[1]

INTRODUCTION

In the FNPRM, the Commission has requested comments on a number of proposals to reduce or eliminate regulatory requirements established in the Commission's *Computer III*, ONA,

[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 *et seq.*

and other related proceedings for the BOCs' provision of "enhanced" services in light of the passage of the 1996 Act and changes in telecommunications technology and market conditions. The Commission states that it seeks to strike a "reasonable balance" between its obligation to reduce or eliminate regulatory requirements that are no longer needed because competition has supplanted the need for regulation to protect consumers and competition, and the Commission's recognition that, until full and effective competition is a reality, certain regulatory safeguards will still be necessary.[2]

AT&T supports the Commission's objective of reducing or eliminating rules and regulatory requirements that have become unnecessary or redundant as a result of subsequent legislation or changes in market conditions. AT&T also agrees with the Commission that regulatory requirements can and should be reduced or eliminated where "competition supplants the need for such requirements to protect consumers and competition."[3]

At the present time, however, notwithstanding the policy of the 1996 Act to open local exchange markets to

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[2] *See* FNPRM, ¶ 7; 47 U.S.C. § 161(a)(2).

[3] FNPRM, ¶ 7. *See also id.*, ¶ 116 (finding that "the level of competition in the interexchange services market is an effective check on AT&T's ability to discriminate in the quality of network services provided to competing ISPs" and that the elimination of regulatory obligations in such circumstances "comports with [the Commission's] statutory obligation to eliminate regulations that are no longer necessary due to 'meaningful economic competition'").

competition, the BOCs and other incumbent LECs continue to enjoy monopolies in their service territories as a result of their continued bottleneck control of essential local facilities. With a 99.1 percent share of the revenues for local exchange and exchange access services in their in-region states, the BOCs as "dominant providers" clearly "continue to have the ability and incentive to engage in anticompetitive behavior against competing ISPs."[4]

Moreover, a principal reason for the lack of local competition is that many provisions of the 1996 Act most critical to the development of local competition -- including the Commission's rules relating to the pricing of the BOCs' unbundled network elements and local services for resale and the scope of the BOCs' obligation to combine unbundled network elements -- have not yet been implemented by the incumbent LECs as a result of legal challenges brought by the BOCs and GTE which are still pending.[5] In addition, the BOCs have thrown into question the constitutionality of the 1996 Act's requirements applicable to their provision of interLATA services, manufacturing, electronic publishing, and alarm monitoring contained in Sections 271

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[4] FNPRM, ¶ 51 and n.151.

[5] *See Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997), *modified on rehearing*, 124 F.3d 934 (8th Cir. 1997), *cert. granted*, 66 U.S.L.W. 3484 (U.S. Jan. 26, 1998).

through 275 of the 1996 Act.[6] Furthermore, the BOCs still have not implemented a number of other requirements of the 1996 Act that are vital to the development of competition, such as providing nondiscriminatory access to their operations support systems.[7]

In these circumstances, it would obviously be premature for the Commission to relieve the BOCs and other incumbent LECs of their existing regulatory obligations. While AT&T firmly believes that both the constitutionality of the 1996 Act and the

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[6] *See SBC Communications, Inc. v. FCC*, No. 7:97-CV-163-X, 97 WL 800662 (N.D. Tex. Dec. 31, 1997), *appeal pending*, Case No. 98-10140 (5th Cir.). In addition, BellSouth has advanced the same constitutional arguments in its appeals from the Commission' s orders denying its applications under Section 271 to provide in-region, interLATA services in South Carolina and Louisiana. *See* Notice of Appeal, *BellSouth Corp. v. FCC*, Case No. 98-1019 (D.C. Cir.); Notice of Appeal, *BellSouth Corp. v. FCC*, Case No. 98-1087 (D.C. Cir.). BellSouth and U S WEST appealed the Commission's First Report and Order and Further Notice of Proposed Rulemaking in *Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services*, 12 FCC Rcd 5361 (1997), alleging that Section 274 is a bill of attainder. *See* Joint Brief of BellSouth Corporation and Intervenor U S WEST, Inc., *BellSouth Corp. v. FCC*, Case No. 97-1113 (D.C. Cir.), pp. 17-31.

[7] *See, e.g., Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, ¶¶ 128-221 (rel. Aug. 19, 1997); *Application of BellSouth Corp. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-208, ¶¶ 82-181 (rel. Dec. 24, 1997); *Application of BellSouth Corp. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Louisiana*, CC Docket No. 97-231, ¶¶ 20-58 (rel. Feb. 4, 1998).

authority of the Commission to require incumbent LECs to provide economical, nondiscriminatory access to unbundled network elements and rates based on forward-looking long-run incremental costs will ultimately be upheld by the courts, at the present time any evaluation of the Commission's regulations based on the assumption that incumbent LECs are subject to those rules is inherently speculative. In this situation, the Commission should await the outcome of those proceedings before taking any steps that might permit the BOCs to delay or stifle emerging competition in local telecommunications markets, including the enhanced service market.

In the meantime, however, the Commission can take steps to reduce or eliminate any unnecessary or redundant regulatory requirements arising from either changed circumstances or those provisions of the 1996 Act which have not been impaired or nullified by the BOCs' legal challenges or lack of implementation. For example, the Commission can eliminate ONA reporting requirements which are no longer needed due to the development of competition in the provision of interexchange services.[8] Similarly, the Commission can reduce or eliminate most of the *Computer II* and *Computer III* network information disclosure rules because they have been superseded by the notice

[8] *See, e.g.*, FNPRM, ¶¶ 115-116.

of network changes requirements of Section 251(c)(5) of the 1996 Act and the Commission's implementing regulations.[9]

AT&T's comments address four issues. In Part I, AT&T shows that the definition of "telecommunications service" in the 1996 Act is equivalent to the definition of "basic transmission service" used in the Commission's *Computer II* proceeding. In Part II, AT&T agrees with the Commission that the BOCs' provision of intraLATA information services should continue to be subject to the nonstructural safeguards established in the Commission's *Computer III* and ONA proceedings. In Part III, AT&T does not oppose the Commission's proposal to relieve the BOCs of their obligation to file Comparably Efficient Interconnection ("CEI") plans ***provided*** that the Commission requires the BOCs to meet their existing ONA obligations (1) to file tariffs for all basic service elements, (2) to provide adequate disclosure of network changes, and (3) to publish a list of basic service elements used by the BOC to provide its own information services. Finally, in Part IV, AT&T agrees with the Commission's tentative conclusion that the network information disclosure rules established pursuant to Section 251(c)(5) should supersede most of the Commission's previous network information disclosure rules and reporting requirements established in the *Computer II*, *Computer III* and ONA proceedings, but AT&T disagrees with the Commission's

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[9] *See, e.g.*, FNPRM, ¶¶ 117-123; 47 U.S.C. § 251(c)(5); 47 C.F.R. §§ 51.325-51.335.

proposal to retain the "all-carrier rule" insofar as it applies to non-dominant interexchange carriers.

I. THE TERM "TELECOMMUNICATIONS SERVICE" USED IN THE 1996 ACT IS SUBSTANTIALLY THE SAME AS THE "BASIC TRANSMISSION SERVICE" USED IN THE COMMISSION'S *COMPUTER II* PROCEEDING.

The term "telecommunications service" as defined in the 1996 Act[10] has substantially the same meaning as the term "basic transmission service" used in the Commission's *Computer II* proceeding. In its *Computer II* proceeding, the Commission defined "basic transmission service" as a "pure transmission capability" between two or more points "over a transmission path that is virtually transparent in terms of its interaction with customer supplied information."[11] The Commission contrasted such "basic transmission services" with "enhanced services" which "employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information."[12]

The definition of "telecommunications service" in the 1996 Act is likewise focused squarely on the transmission of

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[10] 47 U.S.C. § 153(43).

[11] *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, 77 F.C.C.2d 384, 420, ¶ 96 (1980) ("*Computer II*"). *See also id.*, 77 F.C.C.2d at 387, 419-20, ¶¶ 5, 93, 95.

[12] *Id.*, 77 F.C.C.2d at 387, ¶ 5; 47 C.F.R. § 64.702(a).

information without change in form or content.

"Telecommunications service" is defined as the offering to the public of "telecommunications,"[13] which in turn is defined as "the transmission, between or among points . . . without change in the form or content of the information sent and received."[14] This definition describes precisely the same pure transmission capability that the Commission had called "basic transmission service" in *Computer II*, and there is nothing in either the language of the 1996 Act or its legislative history to suggest that Congress intended to make any significant departure from the Commission's "basic transmission service."

Furthermore, the 1996 Act draws a distinction between "telecommunications service" and "information service" which is closely analogous to the distinction drawn by the Commission between "basic transmission service" and "enhanced service" in *Computer II*. As explained in the Joint Explanatory Statement that accompanied the Conference Report on the 1996 Act, the definition of "telecommunications service" was derived from the Senate bill, and the Senate report explained that the term "'telecommunications service' does not include information services."[15] While the term "information service" used in the

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[13] 47 U.S.C. § 153(46).

[14] 47 U.S.C. § 153(43).

[15] *See* Joint Explanatory Statement of the Committee of the Conference, H. Conf. Rep. No. 104-458, 104th Cong., 2d Sess.

(footnote continued on following page)

1996 Act is somewhat more inclusive than the category of "enhanced service" defined in *Computer II* in ways that are not relevant here, the term "information service" includes all of the services previously considered to be "enhanced" under the *Computer II* rules. There is nothing in the language of the statute or its legislative history to indicate that Congress intended any significant departure from the distinction previously drawn in the Commission's *Computer II* rules.[16] Accordingly, all services previously classified as "enhanced services" are "information services" under the 1996 Act, and those services previously classified as "basic transmission service" are "telecommunications services" under the 1996 Act.[17]

II. THE COMMISSION SHOULD CONTINUE TO APPLY ITS NONSTRUCTURAL SAFEGUARDS TO THE BOCS' PROVISION OF INTRALATA INFORMATION SERVICES.

AT&T agrees with the Commission's tentative conclusion that the BOCs may continue to provide intraLATA information

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1, 116 (1996) ("Joint Explanatory Statement"); S. Rep. 104-23, p. 18, 104th Cong., 1st Sess. (1995).

[16] *See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, 11 FCC Rcd 21905, 21955-56, ¶¶ 102-103 (1996) ("*Non-Accounting Safeguards Order*")(The Commission, at ¶ 102, included live operator telemessaging services as "information services, even though they do not fall within the definition of 'enhanced services'").

[17] AT&T uses the terms information service providers ("ISPs") and enhanced service providers ("ESPs") interchangeably.

services on an integrated basis subject to the Commission's *Computer III* nonstructural safeguards.[18] As the Commission recognized in the FNRPM, the BOCs continue to be the dominant providers of local exchange and exchange access services in their in-region states with approximately 99.1 percent of the local service revenues in those markets.[19] As a result of their monopoly position in their local markets, the BOCs continue to have both the ability and the incentive to engage in anticompetitive conduct against competing ISPs. In these circumstances, it is essential that, at a minimum, the Commission keep in place the *Computer III* nonstructural safeguards that were designed to protect competing ISPs from discriminatory or anticompetitive behavior by the BOCs.

The appropriateness of continued application of the Commission's *Computer III* nonstructural safeguards to the BOCs' provision of intraLATA information services is further evidenced by the structural separation requirement and other provisions of Section 272 for the BOC's provision of interLATA information services. Section 272 reflects a determination by Congress that the BOCs' monopoly position in their in-region local markets and the resulting potential for anticompetitive behavior directed at competing ISPs necessitates not only the imposition of

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[18] *See* FNPRM, ¶¶ 7, 51.

[19] *See* FNPRM, ¶ 51 & n.151.

nondiscrimination obligations on the BOCs, but strict structural separation for a minimum period of four years after passage of the 1996 Act, with a further right in the Commission to extend that 4-year period by rule or order.[20] Congress thereby clearly recognized the continued need for safeguards against the potential misuse by the BOCs of their monopoly position when providing interLATA information services.[21]

Moreover, Congress explicitly provided in Section 272(f)(3) that nothing in Section 272 "shall be construed to limit the authority of the Commission under any other section of this Act to prescribe safeguards consistent with the public interest, convenience and necessity."[22] Thus, Section 272(f) not only grants the Commission the authority to extend indefinitely the separate subsidiary requirement for the provision of interLATA information services by the BOCs, it expressly confirms the Commission's authority to prescribe or continue other (or additional) safeguards, such as the nonstructural safeguards

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[20] *See* 47 U.S.C. § 251(f)(2).

[21] The fact that Section 272 imposes a separate subsidiary requirement only for interLATA information services provided by the BOCs further demonstrates that Congress did not intend to affect the Commission's existing nonstructural safeguards for intraLATA information services provided by the BOCs, as the Commission found in its *Non-Accounting Safeguards Order*. *See Non-Accounting Safeguards Order*, 11 FCC Rcd at 21969-70, ¶ 132.

[22] 47 U.S.C. § 272(f)(3).

established by the Commission in *Computer III* for the provision of intraLATA information services by the BOCs.[23]

On the other hand, if a BOC should decide that it would prefer to use a single entity to offer both interLATA and intraLATA information services to the public, the Commission should permit that BOC to provide both types of services through a Section 272 affiliate.[24] The Commission should specifically

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[23] The fact that several of the BOCs have challenged the constitutionality of Section 272 reinforces the need, at a minimum, to maintain the Commission's existing nonstructural safeguards to reduce the opportunity for anticompetitive behavior by the BOCs in providing information services in competition with ISPs. In the unlikely event that the BOCs should prevail on their constitutional claims, the Commission should consider not only applying its nonstructural safeguards to interLATA as well as intraLATA information services of the BOCs, but reinstating the structural separation requirements of *Computer II*, as to interLATA information services in light of, among other things, the clear congressional preference for strict structural separation.

[24] To ensure that BOCs do not unreasonably discriminate in the provision of their services, the Commission should require the BOCs to offer intraLATA information services in accordance with nine "equal access parameters" relating to (1) the availability of identical interface functionality, (2) the unbundling of all basic services, (3) the availability for resale of all basic services, (4) equal technical characteristics for all basic services, (5) equal timeliness for installation, maintenance and repair, (6) equal end user access, (7) comparably efficient interconnection availability as of the date the BOC offers its own enhanced services to the public, (8) minimization of transport costs, and (9) nondiscriminatory availability of comparably efficient interconnection to all interested ISPs. *See Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, 104 F.C.C.2d 958, 1039-42, ¶¶ 154-166 (1986) ("*Computer III Phase I Order*"). These parameters simply spell out in more detail what is required by the more general obligation imposed on the BOCs by Section 202(a) of the Communications Act.

state that the Computer III nonstructural safeguards would continue to apply to the BOCs' provision of intraLATA information services in the event that the Commission should decide to permit the separate subsidiary requirements of Section 272 to sunset pursuant to Section 272(f)(2), or if Section 272 should be found unconstitutional.

III. THE COMMISSION SHOULD RELIEVE THE BOCS OF THEIR OBLIGATION TO FILE CEI PLANS ONLY IF ADEQUATE TARIFFING AND NETWORK DISCLOSURE REQUIREMENTS REMAIN IN FORCE

AT&T does not oppose the Commission's proposal to relieve the BOCs of their obligation to file CEI plans ***provided*** that certain other tariffing and network disclosure requirements essential to the development of competition in the provision of intraLATA information services remain in force. The Commission proposes to eliminate the requirement that the BOCs file CEI plans prior to providing new information services on the grounds that (1) ONA provides ISPs with a greater level of protection against access discrimination than the CEI plans, and (2) under the 1996 Act the BOCs are now subject to additional statutory requirements that will help prevent access discrimination, especially the Section 251(c)(3) unbundling requirement and the Section 251(c)(5) network disclosure requirements.[25] At the same

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[25] *See* FNPRM, ¶¶ 61-62. The Commission also requests comments on whether it should extend by rule the right to obtain unbundled network elements under Section 251(c)(3) to ISPs. *See* FNPRM, ¶¶ 92-96. AT&T does not oppose the extension of Section 251(c)(3) rights to ISPs, which would thereby be entitled to the same access to unbundled network elements that is accorded

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time, however, the Commission is also proposing in the FNPRM to modify certain of the ONA reporting and disclosure requirements. Moreover, the BOCs continue either to evade or seek to have the Commission forbear from enforcing certain of their statutory obligations under Section 251.[26]

In light of the present uncertainty regarding the scope of the BOCs' obligations under ONA and Section 251, the Commission should not relieve the BOCs of their obligation to file CEI plans unless three requirements continue to be met. First, the Commission should continue to require the BOCs to file tariffs for all ONA Basic Service Elements ("BSEs") on an unbundled basis. Second, the Commission must continue to require adequate disclosure of network changes by the BOCs. Third, the

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to telecommunications carriers and thus eliminate any possible inconsistency in the scope of the incumbent LECs' unbundling obligations to their customers.

[26] For example, by challenging the Commission's authority to require incumbent LECs to provide unbundled network elements in combination and refusing to provide competitors with any technically or economically reasonable way to combine such unbundled network elements for themselves, the BOCs have largely precluded competitors from using unbundled network elements pursuant to Section 251(c)(3). *See, e.g., Application of BellSouth Corp. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-208, ¶¶ 182, 195-211 (rel. Dec. 24, 1997). In addition, at least three RBOCs (Bell Atlantic, US West, and Ameritech) have requested the Commission to forbear from enforcing their resale and unbundling obligations under Section 251 with respect to high-speed broadband services.

Commission should continue to require the BOCs to publish annually a list of the BSEs which they use to provide their own information services.

In the FNPRM, the Commission states that ONA provides ISPs a greater level of protection against discrimination than CEI because under ONA the BOCs are required to "unbundle and tariff key network service elements," including not only those elements used to provide their own enhanced services, but also network elements that are used, or can be used, by competing ISPs.[27] This tariffing obligation is fundamental to the protection against discrimination provided by ONA, and the Commission has not proposed to change the ONA tariffing requirement. Accordingly, the Commission should make clear in any order relieving the BOCs of their obligation to file CEI plans that they must continue to file tariffs for all network service elements.

Similarly, any relief given to the BOCs with respect to their obligation to file CEI plans should be conditioned on a continued obligation on the part of the BOCs to make full disclosure of network changes. In the FNPRM, the Commission proposes several changes to the existing network disclosure rules established in *Computer II*, *Computer III* and ONA.[28] Those

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[27] FNPRM, ¶¶ 61 & 79, both citing *Computer III Phase I Order*, 104 F.C.C.2d at 1019-20, ¶ 113.

[28] *See* FNPRM, ¶¶ 99-123.

proposed changes are addressed in Part IV of these comments. The BOCs should not be relieved of their obligation to file CEI plans unless the network disclosure rules remain adequate to prevent the BOCs from engaging in discriminatory or anticompetitive conduct toward competing ISPs with respect to notice and the adequacy of information about network changes being made by the BOCs.

Finally, the Commission should continue to require the BOCs to publish a list of the BSEs used by a BOC to provide its own information services. Such a list of BSEs must currently be included in the annual ONA reports that the BOCs and GTE must file with the Commission.[29] This list of BSEs is an important tool for providers of enhanced services because it enables them to know what basic services underlie a BOC's enhanced service offering. Accordingly, any order relieving the BOCs of their present obligation to file CEI plans with the Commission should make clear that the BOC must continue to publish a list of BSEs used by the BOC to provide its own information services.

IV. THE NOTICE OF NETWORK CHANGES RULES ESTABLISHED BY THE COMMISSION UNDER SECTION 251(C)(5) SHOULD BE FOUND TO SUPERSEDE THE COMMISSION'S PRIOR NETWORK INFORMATION DISCLOSURE RULES.

AT&T agrees with the Commission's tentative conclusion that the notice of network changes rules established by the

[29] *See* FNPRM, ¶ 103 & n.246.

Commission pursuant to Section 251(c)(5)[30] supersede most of the Commission's previous network information disclosure rules and reporting requirements established in the *Computer II*, *Computer III* and ONA proceedings.[31] However, AT&T disagrees with the Commission's tentative conclusion that the "all-carrier rule" should continue to be applied to all carriers owning basic transmission facilities.[32]

As the Commission has previously determined, the disclosure obligations imposed by Section 251(c)(5) and the Commission's implementing regulations are both broader and more detailed than those adopted in the Commission's *Computer III* proceeding.[33] For example, Section 251(c)(5) imposes disclosure requirements on all incumbent LECs, not just the BOCs, and it requires disclosure of "a much broader spectrum of information," not just technical information related to new or modified network

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[30] *See* 47 C.F.R. §§ 51.325-51.335.

[31] *See* FNPRM, ¶¶ 7, 122. Certain aspects of the Commission's network disclosure rules are not superseded by Section 251(c)(5), including the *Computer II* separate affiliate disclosure rule that should be applied to any BOC that operates a *Computer II* subsidiary. AT&T agrees with the Commission's tentative conclusion (¶ 123) that the separate subsidiary disclosure rule should continue to apply, in part, because it requires disclosure under a more stringent timetable than that required under Section 251(c)(5).

[32] *See* FNPRM, ¶¶ 118, 122-123.

[33] *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 19392, 19486, ¶ 205 (1996) ("*Local Competition Second Report and Order*").

services affecting the interconnection of enhanced services to the BOC networks.[34] Accordingly, AT&T agrees with the Commission that the disclosure requirements established in *Computer III* should be deemed superseded by Section 251(c)(5) and the Commission's regulations.

AT&T also agrees with the Commission's tentative conclusion that AT&T should no longer be required to file an affidavit that it has not discriminated in the quality of network services provided to enhanced service providers pursuant to the Commission's ONA rules.[35] As the Commission explains, this filing is no longer necessary "because the level of competition in the interexchange services market is an effective check on AT&T's ability to discriminate in the quality of network services provided to competing ISPs."[36] AT&T also agrees with the Commission's finding that "the competitive nature of the interexchange market provides an important assurance that access to [interexchange] services will be open to ISPs," and that the elimination of this filing obligation on the part of AT&T "comports with [the Commission's] statutory obligation to eliminate regulations that are no longer necessary due to

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[34] *Id.*

[35] *See* FNPRM, ¶ 116.

[36] *Id.*

'meaningful economic competition' between providers of such service."[37]

For the same reasons, the Commission should reject its proposal and relieve all non-dominant interexchange carriers from the application of the "all-carrier rule." At present, the *Computer II* network information disclosure rules are supposed to be applicable to "all carriers owning basic transmission facilities."[38] The all-carrier rule was adopted in 1980, well before the divestiture of the BOCs and the advent of effective competition in interexchange services. Since that time, the Commission has recognized in a series of orders that different regulatory rules should be applied to "dominant carriers," which have the market power to control prices, and "non-dominant carriers," which do not have market power.[39] Moreover, the Commission has repeatedly found that the interexchange

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[37] *Id.*, citing 47 U.S.C. § 161(a)(2).

[38] *See* FNPRM, ¶¶ 118-117; *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, 84 F.C.C.2d 50, 82 ¶ 95 (1980) ("*Computer II Reconsideration Order*") (finding that the extension of the *Computer II* network disclosure rule to all carriers owning basic transmission facilities had "some merit" in 1980).

[39] *See, e.g.*, 47 C.F.R. §§ 61.3(o), 61.3(u); *Motion of AT&T to be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd 3271, 3274, ¶ 4 (1995) ("*AT&T Nondominance Order*") ("In a series of orders, the Commission distinguished two kinds of carriers -- those with market power (dominant carriers) and those without market power (non-dominant carriers)").

telecommunications market is now highly competitive and that all carriers in that market should be classified as "non-dominant."[40]

In these circumstances, there is no longer any justification for subjecting AT&T or any other non-dominant interexchange carrier to the all-carrier rule.[41] As a result of the vigorous competition that exists in the interexchange telecommunications market, interexchange carriers have neither the ability nor the incentive to attempt to gain an unfair advantage by withholding network information from ISPs. As the Commission has found, a non-dominant interexchange carrier is unable to engage in unreasonable or discriminatory practices because in a competitive environment any attempt to do so would simply cause its customers to switch to other carriers.[42] Such switching by customers among carriers is both readily available and commonplace because the market for interexchange telecommunications services is characterized by both a high supply elasticity and a high demand elasticity for business and

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[40] *See, e.g., Policy and Rules Concerning the Interstate, Interexchange Marketplace,* 11 FCC Rcd 20730, 20741-43, ¶¶ 21-22 (1996) ("*Tariff Forbearance Order*"); *AT&T Nondominance Order,* 11 FCC Rcd at 3278-79, 3288, ¶¶ 9, 26 (1995).

[41] *See Local Competition Second Report and Order,* 11 FCC Rcd at 19471, ¶ 172 ("competing service providers already face sufficient incentives to ensure compatibility of their planned changes with [other's] networks").

[42] *See Tariff Forbearance Order,* 11 FCC Rcd at 20743, ¶ 21.